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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,339	06/02/2005	Mayumi Kotani	8156/84352	3456
42798	7590	09/26/2006		
FITCH, EVEN, TABIN & FLANNERY P. O. BOX 65973 WASHINGTON, DC 20035			EXAMINER CLARK, AMY LYNN	
			ART UNIT 1655	PAPER NUMBER

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/537,339

Applicant(s)

KOTANI ET AL.

Examiner

Amy L. Clark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-17, drawn to a composition comprising a green-yellow vegetable and a light-colored vegetable.

Group II, claim 18, drawn to a method of inhibiting the generation of blood lipid peroxides, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable.

Group III, claim 19, drawn to a method for lowering blood TBARS levels of suppressing an elevation of blood TBARS levels, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable.

Group IV, claim 20, drawn to a method of increasing blood vitamin E levels, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable.

Group V, claim(s) 21, drawn to a method of enhancing blood antioxidant activity, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable.

Group VI, claim(s) 22, drawn to a method for lowering blood active oxygen levels or suppressing an elevation of blood active oxygen levels, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable.

Group VII, claim(s) 23, drawn to a method of preventing or treating diabetic complications, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable.

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The inventions listed as Groups I-VII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Group I is drawn to a composition comprising a green-yellow vegetable and a light-colored vegetable, whereas Groups II-VII are drawn to various methods. Group I is drawn to a method of inhibiting the generation of blood lipid peroxides, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable, Group III is drawn to a method for lowering blood TBARS levels of suppressing an elevation of blood TBARS levels, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable, Group IV is drawn to a method of increasing blood vitamin E levels, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable, Group V is drawn to a method of enhancing blood antioxidant activity, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable, Group VI is drawn to a method for lowering blood active oxygen levels or suppressing an elevation of blood active oxygen levels, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable and Group VII is drawn to a method of preventing or treating diabetic complications, which comprises ingesting effective amounts of a green-yellow vegetable and a light-colored vegetable. A search for a composition comprising a green-yellow vegetable and a light-colored vegetable may be used as a skin care product or as a food and does not require the particulars of the methods of Groups II-VII.

Furthermore, Claim 1, at least, is anticipated by or obvious over Rosso et al. (Reference U, The New Basics Cookbook, 1989) because Rosso teaches yellow pepper soup comprising yellow bell peppers, onions and leeks (See page 94), which reads on a composition comprising a green-yellow vegetable and a light-colored vegetable. Consequently, the special technical feature which links the claims does not provide a contribution over the prior art, so unity of the invention is lacking.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Group I:

Specie A: elect at least one green-yellow vegetable and at least one light-colored vegetable from Claim 1.

Specie B: elect at least one member listed in Claim 4.

Specie C: elect one use from Claim 5, 12, 13, 14, 15, 16 or 17.

If Claim 5 is elected as Specie C, further elect the type of food from Claim 6, 7, 8, 9, 10 or 11.

Please elect from each Specie listing (elect at least one of each ingredient from Specie A, elect at least one member from Specie B and elect one use from Specie C, as well as the type of food if Claim 5 is elected as Specie C).

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Group I:

Specie A: Drawn to Claims 1-17.

Specie B: If Claim 5 is elected, drawn to claims 6-11, if Claim 12 is elected, drawn to Claim 12, if Claim 13 is elected, drawn to Claim 13, if Claim 14 is elected, drawn to Claim 14, if Claim 15 is elected, drawn to Claim 13, if Claim 16 is elected, drawn to Claim 16 or if Claim 17 is elected, drawn to Claim 17.

The following claim(s) are generic: Claims 1 and 18-23.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

Green-yellow vegetables, light-colored vegetables, the additional ingredients listed in Claim 4 as "members", uses of invention and the types of food listed in Claims 6-10 are distinct both physically and functionally from each other and a search for one green-yellow vegetable, light-colored vegetable, additional ingredient and type of food is not co-extensive with a search for another.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571) 272-1310. The examiner can normally be reached on 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Amy L. Clark
AU 1655

Amy L. Clark
August 22, 2006

Michele C. Flood.
MICHELE FLOOD
PRIMARY EXAMINER